

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 10, 2005

IN RE:

**SPRINT UNITED TARIFF 2003-710 TO
INTRODUCE SAFE AND SOUND II SOLUTION**

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**DOCKET NO.
03-00442**

ORDER DENYING TARIFF AS FILED

This matter came before Director Pat Miller, Director Sara Kyle, and Director Ron Jones of the Tennessee Regulatory Authority (the "TRA" or "Authority"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on December 15, 2003 for consideration of Sprint United Tariff 2003-710 to Introduce Safe and Sound II Solution

Background

The Tariff at issue in this Docket offers local exchange service with Caller ID, both telecommunication services, for \$19.95 so long as the customer also subscribes to inside wire maintenance and a warranty for customer-owned premise equipment, services not regulated or tariffed by the TRA. The telecommunications services included in this bundle are available for resale at the wholesale rate out of the General Subscriber Service Tariff ("GSST") of United Telephone-Southeast, Inc. ("UTSE"), but UTSE has declined to offer for resale the telecommunications services portion of the bundle at the wholesale rate, claiming that it has no resale obligation if regulated services are bundled with non-regulated services.

During the October 6, 2003 Authority Conference, the Panel opened a contested case and granted intervention to the Consumer Advocate and Protection Division of the Office of the Attorney General (“CAPD”) and BellSouth Telecommunications, Inc. (“BellSouth”) for purposes of briefing the following legal issue:

Whether state and/or federal statutes, rules, orders, or other provisions require that all or any part of an offering which bundles regulated service and non-regulated services be made available for resale? If so, should the wholesale discount apply? If yes, how should it apply?

On November 21, 2003, after all briefs on this legal question had been filed, AT&T Communications of the South Central States, LLC (“AT&T”) petitioned to intervene in this Docket. At the November 24, 2003 Authority Conference, the Tariff was resuspended for twenty-one days to allow the legal question, its impact on the Tariff, and AT&T’s petition to intervene to be considered by the Directors at the December 15, 2003 Authority Conference

Statutory Framework

Pursuant to 47 U.S.C.A. § 251(c)(4), Incumbent Local Exchange Carriers (“ILECs”) have the duty “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.” In their *Local Competition Order*, the Federal Communications Commission (“FCC”) determined that this resale obligation extends to “retail services that are actually composed of other retail services, i.e., bundled service offerings.”¹ The FCC has also found that ILECS should not be permitted to evade this statutory resale obligation by shifting their customers to “nonstandard offerings.”²

¹ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, FCC 96-325 (*First Report and Order*) 11 F C C R 15,499, ¶ 877 (August 8, 1996)

² *First Report and Order*, ¶ 948

December 15, 2003 Authority Conference

At the December 15, 2003 Authority Conference, the voting Panel acknowledged that, pursuant to the statutory resale obligations of the Federal Telecommunications Act, ILECs must make available for resale at wholesale rates all telecommunications services that are provided by the carrier to customers at retail. This resale obligation requires ILECs to make available for resale a bundled telecommunications offering. The Panel found that the tariff provides for a bundle of telecommunications services, local exchange service and Caller ID, that are offered at retail and concluded that the bundle must be made available for resale. For this reason, the Panel voted unanimously to deny the Tariff in its current form, pursuant to the representations of UTSE, and to allow the Parties until December 29, 2003 to discuss a way in which the Tariff could be modified to be compliant with federal resale requirements and the Authority's decision. Thereafter, the Panel unanimously granted the petition of AT&T to intervene in this Docket to allow AT&T to participate in the meeting of the Parties.

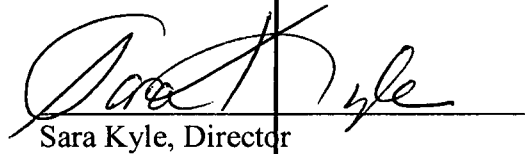
IT IS THEREFORE ORDERED THAT:

1. The bundled services in this Tariff include telecommunications services offered at retail; therefore, the bundle must be made available for resale to requesting competing local exchange carriers and resellers.
2. The Sprint United Tariff 2003-710 to Introduce Safe and Sound II Solution in its current form is hereby denied.
3. AT&T is granted leave to intervene in this Docket on a going-forward basis and may receive copies of any notices, orders or other documents in this matter.

4. The Parties shall meet in an effort to resolve the issue of how to apply the wholesale discount and Sprint shall file with the TRA on or before December 29, 2003 a revised tariff which makes available for resale any telecommunications services offered in a manner compliant with federal resale requirements.³



Pat Miller, Director



Sara Kyle, Director



Ron Jones, Director

³ On December 23, 2003, Counsel for UTSE sent a letter to the TRA advising that UTSE was withdrawing the tariff filed in this docket